IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

WP(C).No. 17242 of 2006(C)

PETITIONER:

P.M.DHANARAJAN,
DRAFTSMAN, PROJECT ENGINEERING DIVISION,
TRANSFORMERS AND ELECTRICALS KERALA LTD. (TELK),
ANGAMALY, ERNAKULAM.

BY ADV. SRI.N.SUGATHAN
SMT.VARSHA BHASKAR

RESPONDENTS:

THE TRANSFORMERS AND ELECTRICAL
KERALA LTD., REPRESENTED BY ITS
MANAGING DIRECTOR, ANGAMALY, ERNAKULAM.

BY ADV. SRI.M.PATHROSE MATTHAI (SR.)
SRI.RONY J.PALLATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 17242/2006 C

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER NO. 602 DT. 20/11/91.

EXT.P2. COPY OF THE ORDER NO. 603 DT. 15/1/92.

EXT.P3. COPY OF THE ORDER NO. 616 DT. 9/11/02 AMENDING EXT.P2.

EXT.P4. COPY OF THE ORDER NO. 797 DT. 12/06/98 WITH EXTRACT OF THE SENIORITY LIST.

EXT.P5. COPY OF THE ORDER NO. 800 DT. 20/6/98.

EXT.P6. COPY OF THE ORDER NO. 800A DT. 20/6/98.

EXT.P7. COPY OF THE MEMO DT. 28/4/00 OF THE RESPONDENT.

EXT.P8. COPY OF THE REPRESENTATION DT. 4/3/05 TO THE RESPONDENT.

EXT.P9. COPY OF THE JUDGMENT DT. 3/2/2006 IN WPC NO. 19778/2005.

EXT.P10. COPY OF THE ORDER DT. 22/3/2006 OF THE RESPONDENT.

EXT.P11. COPY OF THE ORDER NO. 622 DT. 16/11/92.

EXT.P12. COPY OF THE ORDER NO. 725 DT. 20/6/95.

EXT.P13. COPY OF THE REPRESENTATION DT. 6/1/93 BY GEORGE JOHN.

EXT.P14. COPY OF THE ORDER NO. 1035 DT. 30/09/2005.

RESPONDENT'S EXHIBITS **NIL.**

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V. GIRI ,J.

WP(C).NO.17242 of 2006

Dated this the 15th day of October, 2007

JUDGMENT

The petitioner joined services of the respondent Company in October 1991 as a Draftsman. Ext.P2 promotion rules came to be framed by the Company pursuant to the recommendations made by Mr.Justice V.Bhaskaran Nambiar, former Judge of this Court, who has requested the Company to give recommendations regarding the permissive promotion policy for managerial/ supervisory personnel. Ext.P2 rules were effected from 15.1.1992. Technical branch is divided under Ext.P2 as 7 categories. Promotion of Draftsman did not specifically find a place in the Technical branch. Category-5 is the post of Junior Engineer and method of appointment is by promotion of Foreman.

2. It seems that Draftsman felt aggrieved by not being treated as a separate category in Ext.P2 and possibly, they had made a representation to the company for suitable amendment to Ext.P2 rules. By Ext.P3 dated 9.11.1992, Ext.P2 was amended in certain areas, insofar as the technical branch is concerned, category-6 `Foreman' was amended as to include `Draftsman' also. Net result

of Ext.P3 was that the petitioner also came to be included in the feeder category for promotion to the post of Junior Engineer.

3. Petitioner's grievance was that notwithstanding Ext.P3, he was not considered for promotion to the post of Junior Engineer. Directions were issued by this Court on more than one occasion to the company to consider his claim. The company took the stand that though the petitioner became eligible for promotion to the post of Junior Engineer, no post of a Junior Engineer (Draftsman) came up and therefore he could not be considered for promotion. In other words, the stand taken was that insofar as the technical branch is concerned, the requirement of a Junior Engineer, from among Draftsman as such was not felt. Therefore there was no vacancy to accommodate the petitioner in the post of Junior Engineer.

4. The stand taken by the company was impugned in this writ petition. The company has filed a counter affidavit inter alia contending that unlike in the case of Government departments, notional promotion to different categories in the company would be governed not only by promotion rules but also by specific requirements in any category as such. Though Ext.P3 came to be issued, by directing that `*Foreman*' shall include `*Draftsman*' also, the nature of functions being discharged by direct categories are

always different. Thus a person who was acting as a Foreman would discharge different functions, when he is promoted as a Junior Engineer, from that a person who was functioning as a Draftsman but was later promoted as Junior Engineer. It is therefore that though the rules did not specifically earmark any post in the category of junior Engineer as that available for promotion of Draftsman, the management of the company had effected promotions after assessing the requirements as such.

5. Learned counsel for the petitioner submitted that recent orders have been passed by the company promoting the petitioner as a Junior Engineer with effect from 10.2.2007. Therefore the principal grievance raised by the petitioner seems to have been addressed by the Company. What remains to be considered is whether the petitioner is entitled to a date of promotion to the post of Junior Engineer with reference to a prior date as such.

6. In my view, it is noteworthy that the petitioner does not have a case that any person junior to him in the post of Draftsman was promoted to the post of Junior Engineer overlooking his case. Promotion of Draftsman was being treated differently in the technical branch. It is true that under Ext.P3, `Foreman' is directed to include `Draftsman' also. But a perusal of Ext.P2 will show that

Junior Engineers were formerly designated as Senior Foreman, and apparently, Junior Engineer would have been the promotion post of Foreman as such. May be, as per Ext.P3, it was decided that Draftsman should not stagnate without any avenues for promotion also and it is therefore the rules were amended that under Ext.P3 `Foreman' was directed to include `Draftsman' also. But a mere amendment to the rules by itself cannot obliterate the difference in the nature of the functions discharged by `Foreman' and `Draftsman'. If that be so, the management of the company was entitled to ascertain the requirements of a person functioning as a Draftsman in the category of a Junior Engineer. In paragraph-11 of the counter affidavit reference is made to the fact that though one George John who was earlier promoted as a Junior Engineer was later promoted as an Engineer and Sri.George John was a Draftsman, it was found that he had to be transferred to Project Division as there was no organisational requirement for a Junior Engineer (Draftsman) in the company. I am also satisfied that there is no wilful discrimination practiced by the company as regards either the petitioner or the category of Draftsman. Nor can the company be said to have been acted in an irrational or illegal manner in deciding to effect promotions to the post of Junior

Engineers, keeping in mind the organisational requirements and the difference in the functions and duties discharged by a Foreman/ Draftsman of the Company. In the circumstances, I do not find any grounds to interfere in the writ petition, especially, since the petitioner has actually been promoted as a Junior Engineer with effect from 17.2.2007.

The writ petition is therefore dismissed.

V. GIRI, JUDGE

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